

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Consolidated Requests for Waiver of Section	)	
76.1204(a)(1) of the Commission's Rules <sup>1</sup>	)	
	)	
Implementation of Section 304 of the	)	CS Docket No. 97-80
Telecommunications Act of 1996	)	
	)	
Commercial Availability of	)	
Navigation Devices	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 29, 2007**

**Released: June 29, 2007**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. The multichannel video programming distributors listed in the Appendix to this Order ("Petitioners") have filed with the Chief of the Media Bureau requests for waiver (the "Waiver Requests") of the ban on integrated set-top boxes set forth in Section 76.1204(a)(1) of the Commission's rules.<sup>2</sup> The Petitioners have indicated that they operate all-digital systems or will transition to all-digital systems by February 17, 2009. All seek a waiver of the integration ban, which they argue is necessary in order to make the transition or to continue to provide the high-quality video and related digital services over their all-digital distribution networks.<sup>3</sup> For the reasons stated below, we grant the Waiver Requests pursuant to Sections 1.3 and 76.7 of the Commission's rules.<sup>4</sup>

**II. BACKGROUND**

**A. Section 629 of the Act**

2. Section 629(a) of the Communications Act of 1934, as amended (the "Act"), requires the Commission to:

adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment

<sup>1</sup> The name of each petitioner and the CSR number assigned to each petitioner are set forth in the attached Appendix.

<sup>2</sup> 47 C.F.R. § 76.1204(a)(1). The separation of the security element from the host device required by this rule is referred to as the "integration ban."

<sup>3</sup> See, e.g., Radcliffe Telephone Company Waiver Request at 3; Dumont Telephone Company Waiver Request at 3; En-Touch Waiver Request at 2.

<sup>4</sup> 47 C.F.R. §§ 1.3, 76.7.

used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor.<sup>5</sup>

Through Section 629, Congress intended to ensure that consumers have the opportunity to purchase navigation devices from sources other than their multichannel video programming distributor (“MVPD”).<sup>6</sup> Congress characterized the transition to competition in navigation devices as an important goal, stating that “[c]ompetition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality.”<sup>7</sup> At the same time, Congress recognized that MVPDs have “a valid interest, which the Commission should continue to protect, in system or signal security and in preventing theft of service.”<sup>8</sup> Similarly, Congress also sought to avoid Commission actions “which could have the effect of freezing or chilling the development of new technologies and services.”<sup>9</sup> Under Section 629(c), therefore, the Commission may grant a waiver of its regulations implementing Section 629(a) when doing so is necessary to assist the development or introduction of new or improved services.<sup>10</sup>

3. To carry out the directives of Section 629, the Commission in 1998 required MVPDs to make available by July 1, 2000 a security element separate from the basic navigation device (the “host device”).<sup>11</sup> The integration ban was designed to enable unaffiliated manufacturers, retailers, and other vendors to commercially market host devices while allowing MVPDs to retain control over their system security. MVPDs were permitted to continue providing equipment with integrated security until January 1, 2005, so long as modular security components, known as point-of-deployment modules (“PODs”),<sup>12</sup> were also made available for use with host devices obtained through retail outlets. In April 2003, in response to a request from cable operators, the Commission extended the effective date of the integration ban until July 1, 2006.<sup>13</sup> Then, in 2005, again at the urging of cable operators,<sup>14</sup> the Commission further extended that date until July 1, 2007.<sup>15</sup> In that decision, the Commission stated that it would “entertain certain requests for waiver of the prohibition on integrated devices for limited capability integrated digital cable boxes.”<sup>16</sup> It further stated that “at the heart of a robust retail market for navigation devices is the reliance of cable operators on the same security technology and conditional access interface that

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<sup>5</sup> 47 U.S.C. § 549(a).

<sup>6</sup> See S. REP. 104-230, at 181 (1996) (Conf. Rep.). See also *Bellsouth Interactive Media Services, LLC*, 19 FCC Rcd 15607, 15608, ¶ 2 (2004).

<sup>7</sup> H.R. REP. NO. 104-204, at 112 (1995).

<sup>8</sup> *Id.*

<sup>9</sup> S. REP. 104-230, at 181 (1996) (Conf. Rep.).

<sup>10</sup> 47 U.S.C. § 549(c).

<sup>11</sup> *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14808, ¶ 80 (1998) (“*First Report and Order*”); 47 C.F.R. § 76.1204(a)(1).

<sup>12</sup> For marketing purposes, PODs are referred to as “CableCARDS.”

<sup>13</sup> *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 18 FCC Rcd 7924, 7926, ¶ 4 (2003).

<sup>14</sup> *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6802-03, ¶ 13 (2005) (“*2005 Deferral Order*”), *pet. for review denied*, *Charter Communications, Inc. v. FCC*, 460 F.3d 31 (D.C. Cir. 2006).

<sup>15</sup> *Id.* at 6814, ¶ 31.

<sup>16</sup> *Id.*

consumer electronics manufacturers must rely on in developing competitive navigation devices.”<sup>17</sup> The Commission concluded that such common reliance will “align MVPDs’ incentives with those of other industry participants so that MVPDs will plan the development of their services and technical standards to incorporate devices that can be independently manufactured, sold, and improved upon” and make it “far more likely that [MVPDs] will continue to support and take into account the need to support services that will work with independently supplied and purchased equipment.”<sup>18</sup>

4. On January 10, 2007, the Media Bureau acted upon three requests for waiver of Section 76.1204(a)(1) of the Commission’s rules.<sup>19</sup> In each case, the Bureau found that waiver was not warranted for any of the parties pursuant to Section 629(c) because none of the parties demonstrated that waiver was necessary to assist in the development or introduction of a new or improved service.<sup>20</sup> The Bureau also found that devices with two-way functionality did not meet the waiver policy established by the Commission in the 2005 *Deferral Order* for low-cost, limited-capability set-top boxes.<sup>21</sup> The Bureau found good cause, however, to conditionally grant Bend Cable Communications d/b/a BendBroadband (“BendBroadband”) a waiver of Section 76.1204(a)(1) of the Commission’s rules, given its commitment to move to an all-digital network by 2008.<sup>22</sup> On May 4, 2007, the Media Bureau acted upon another three requests for waiver of Section 76.1204(a)(1) of the Commission’s rules.<sup>23</sup> The Bureau conditionally granted waivers to Millennium Telecom, LLC d/b/a OneSource Communications<sup>24</sup> and GCI Cable, Inc.<sup>25</sup> similar to the waiver granted to BendBroadband.<sup>26</sup>

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<sup>17</sup> *Id.* at 6807, ¶ 27.

<sup>18</sup> *Id.* at 6809, ¶ 30.

<sup>19</sup> See *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 209 (2007) (“*BendBroadband Order*”); *Cablevision Systems Corporation’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 220 (2007) (“*Cablevision Order*”); *Comcast Corporation Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 228 (2007) (“*Comcast Order*”). Collectively, these orders are referred to as the “*January 10 Orders*.”

<sup>20</sup> *BendBroadband Order*, 22 FCC Rcd at 213-214, ¶¶ 11-15; *Cablevision Order*, 224-225, ¶¶ 12-16; *Comcast Order*, 22 FCC Rcd at 235-238, ¶¶ 15-23.

<sup>21</sup> *BendBroadband Order*, 22 FCC Rcd at 214-215, ¶¶ 16-20; *Comcast Order*, 22 FCC Rcd at 238-241, ¶¶ 24-30.

<sup>22</sup> The Bureau also found good cause to grant Cablevision Systems Corporation’s request for waiver based on the company’s longstanding use of a separated security solution. *Cablevision Order*, 22 FCC Rcd at 225-227, ¶¶ 17-20.

<sup>23</sup> See *Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, DA 07-2008 (2007) (“*Charter Order*”); *GCI Cable, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, DA 07-2010 (2007) (“*GCI Order*”); *Millennium Telcom, LLC d/b/a OneSource Communications Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, DA 07-2009 (2007) (“*Millennium Order*”).

<sup>24</sup> *Millennium Order* at ¶ 16.

<sup>25</sup> *GCI Order* at ¶¶ 15, 17, and granted a waiver to Charter Communications, Inc. due to its demonstrated financial hardship.

<sup>26</sup> The Bureau also found good cause to grant Charter Communications, Inc.’s request for waiver due to the company’s demonstrated financial hardship. *Charter Order* at ¶ 12.

## B. The Waiver Requests and Comments

### 1. The City of San Bruno d/b/a San Bruno Municipal Cable

5. The City of San Bruno d/b/a San Bruno Municipal Cable (“San Bruno”) seeks waiver of the integration ban for the Motorola DCT-700 (the “DCT-700”), relief that San Bruno claims is necessary to meet its goal of transitioning to an all-digital network by February 17, 2009.<sup>27</sup> San Bruno requests a two-year industry-wide waiver, or in the alternative, at least a waiver for small companies deploying the DCT-700.<sup>28</sup> In the interest of closing the digital divide, San Bruno wants to provide all cable television households in San Bruno two DCT-700 set-top boxes free of charge, a plan that hinges on the continued availability of the low-cost DCT-700.<sup>29</sup> San Bruno has filed an affidavit stating that if it is granted a waiver of the integration ban, it commits to transition to an all-digital network by February 17, 2009 and to the other requirements set forth in the *BendBroadband Order*.<sup>30</sup> San Bruno claims that grant of the Waiver Request is critical because low-end digital set-top boxes like the DCT-700 are vital to its plans to move to an all-digital network within two to three years.<sup>31</sup>

6. A number of parties filed in response to the Waiver Request, and San Bruno also filed a reply to these comments. The comments filed in response to the Waiver Request generally supported grant of a waiver. The American Cable Association (“ACA”), Motorola, Inc. (“Motorola”) and Representative Tom Lantos of California fully support a waiver in this circumstance.<sup>32</sup> ACA echoes San Bruno Cable’s assertion that “Without a waiver for the DCT-700, the City of San Bruno will need to postpone is planned [digital] transition for years.”<sup>33</sup>

7. Motorola states that using the DCH-100, Motorola’s lowest-cost nonintegrated set-top box, will cost cable operators “substantially more than the DCT-700, even in higher volumes.”<sup>34</sup> According to Motorola, the additional cost will be borne by consumers, which threatens to “negatively affect consumer uptake of digital services” and “risk the loss of price-sensitive customers to competitors,

<sup>27</sup> See City of San Bruno Waiver Request at 1-2; Letter from Nicole Paolini-Subramanya, Counsel, San Bruno Cable to Marlene Dortch, Secretary, Federal Communications Commission, *attaching* Affidavit of Constance C. Jackson, City Manager, City of San Bruno (May 7, 2007) (“*May 4 Affidavit*”). San Bruno has committed to complete its transition to an all-digital cable system by the deadline for the transition to digital television broadcasting imposed by Congress. Section 309(j)(14)(A) of the Communications Act states that “[a] full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond February 17, 2009.” 47 U.S.C. § 309(j)(14)(A). See also *Comcast Order*, 22 FCC Rcd at 242, ¶ 34 (2007) (granting “Comcast leave to file an amended waiver request that . . . seeks waiver based on a commitment to go all-digital by a date-certain such as February 2009 or sooner, when broadcasters will cease their analog operations.”).

<sup>28</sup> City of San Bruno Waiver Request at 2.

<sup>29</sup> *Id.* at 3.

<sup>30</sup> *May 4 Affidavit*; *BendBroadband Order*, 22 FCC Rcd at 218, ¶ 26.

<sup>31</sup> City of San Bruno Waiver Request at 1-2, 4-5.

<sup>32</sup> ACA Comments, CSR-7112-Z, CSR-7110-Z, CSR-7117-Z, CSR-7116-Z, CSR-7124-Z, CSR-7109-Z, CSR-7111-Z, CSR-7114-Z, at 3 (“ACA March 5 Comments”), Motorola Comments, CSR-7109-Z, CSR-7110-Z, CSR-7111-Z, CSR-7112-Z, CSR-7113-Z, CSR-7114-Z, CSR-7115-Z, CSR-7116-Z, CSR-7117-Z, at 1-2 (“Motorola March 5 Comments”), Letter from Congressman Tom Lantos to Brendan Murray, Media Bureau, Policy Division, Federal Communications Commission (“Congressman Lantos ex parte”).

<sup>33</sup> ACA March 5 Comments at 8.

<sup>34</sup> Motorola March 5 Comments at 4.

including DBS companies.”<sup>35</sup>

8. Congressman Tom Lantos points out that San Bruno Cable has “embarked on a noteworthy project to convert their cable system to an all-digital system and have taken the bold step of purchasing 20,000 Motorola brand DCT-700 set-top boxes which will provide a low-cost alternative to the average cost of a standard set-top box.”<sup>36</sup> Representative Lantos asserts that granting San Bruno Cable’s request would allow “the citizens there to have affordable digital television while not penalizing the local municipality for creatively addressing the challenge.”<sup>37</sup>

9. The Consumer Electronics Association (“CEA”) states that it is sympathetic to San Bruno Cable’s outlook and its objectives but believes that grant of the Waiver Request would undermine the objective of Congress “to create, at long last, a competitive market for cable navigation devices.”<sup>38</sup> In reply, San Bruno Cable refutes the assertion that a waiver would undermine the objective of Congress. San Bruno Cable points out that CEA itself acknowledges that smaller cable operators like San Bruno Cable are at the mercy of the product decisions made by larger cable operators and entrenched vendors, and therefore, granting the Waiver Request “will have absolutely no adverse effect on the competitive market for navigation devices.”<sup>39</sup>

## **2. Liberty Cablevision of Puerto Rico, Ltd.**

10. Liberty Cablevision of Puerto Rico, Ltd. (“LCPR”) seeks waiver of the integration ban that would allow LCPR to continue to place into service Motorola DCT-700s after July 1, 2007. LCPR gives several reasons for the waiver it requests. First, building on the rationale for the waivers we granted to BendBroadband, Millennium Telecom, LLC d/b/a OneSource Communications (“Millennium”), and GCI Cable, Inc (“GCI”), LCPR states that it has already completed the migration to an all-digital network.<sup>40</sup> It has, in other words, achieved the goal towards which BendBroadband, Millennium, and GCI are still working. In order to complete its migration to an all-digital network, LCPR deployed Motorola DCT-700 boxes to its subscribers. LCPR wishes to continue to do so after July 1 of this year, when the ban on the further distribution of integrated boxes takes effect. Potential subscribers to LCPR’s service who have analog receivers will need a set-top box to convert LCPR’s digital content into signals that can be displayed on their analog screens.<sup>41</sup> LCPR claims that the only two boxes that it will be able to use are Motorola’s integrated DCT-700 and its non-integrated DCH-100. The DCT-700 costs \$79. The DCH-100 will cost nearly three times more.<sup>42</sup> LCPR states that with the money it can save if a waiver permits its continued distribution of the DCT-700, it plans to offer additional High Definition (“HD”) and Video-on-Demand (“VOD”) programming, higher Internet access speeds, and advanced telecommunications capabilities.<sup>43</sup> LCPR reasons that if the Commission grants waivers to encourage BendBroadband, Millennium, and GCI to complete their transitions to all-digital networks, it should grant

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<sup>35</sup> *Id.* at 5.

<sup>36</sup> Congressman Lantos *ex parte*.

<sup>37</sup> *Id.*

<sup>38</sup> CEA Comments, CSR-7116-Z, at 3.

<sup>39</sup> San Bruno Cable Reply at 3.

<sup>40</sup> LCPR Waiver Request at 1 & accompanying Sworn Declaration of Ivan Rosa, Director of Technical Operations of LCPR, at ¶ 2.

<sup>41</sup> *Id.* at 3-4.

<sup>42</sup> *Id.* at 3.

<sup>43</sup> *Id.* at 2-3.

LCPR a waiver for having already completed its own transition, and to support and sustain it in surpassing that goal.<sup>44</sup>

11. LCPR also argues for its waiver on the grounds that its service areas – small and rural communities in Puerto Rico – have low population density,<sup>45</sup> weak economic conditions,<sup>46</sup> and low subscription to cable service.<sup>47</sup> These factors, LCPR claims, make impractical the use of boxes three times more costly than the DCT-700 because the costs will not be accepted by its potential subscribers.<sup>48</sup> LCPR also claims that the Commission, when it adopted Section 76.1204(a)(1), did not consider conditions in Puerto Rico;<sup>49</sup> that CableCARD-based devices are not generally available in retail and other outlets in Puerto Rico;<sup>50</sup> and that LCPR’s subscriber base is so small that waiving the integration ban for it will not impair the achievement of the ban’s national goals.<sup>51</sup>

12. LCPR’s Request was placed on public notice on February 27, 2007.<sup>52</sup> Four parties filed responsive comments. ACA supports LCPR’s Request, emphasizing the company’s completed transition to an all-digital network despite the weak economic conditions in its service areas.<sup>53</sup> Motorola also supports LCPR, touting the importance of the DCT-700 to the digital transitions of LCPR and other small cable operators.<sup>54</sup> The Telecommunications Regulatory Board of Puerto Rico echoes LCPR’s emphasis on the benefits of the DCT-700 given the economic conditions of Puerto Rico.<sup>55</sup> Only CEA opposes the Request. CEA argues that the fundamental problem faced by LCPR, namely the lack of a low-cost set-top box that complies with Section 76.1204(a)(1)’s integration ban, will be solved not by waivers of the ban, but by its prompt nationwide effectiveness.<sup>56</sup> LCPR replies that CEA’s argument, whatever its general intellectual validity, ignores actual conditions in Puerto Rico.<sup>57</sup> LCPR also produced a statement supporting its Request by the Honorable Luis G. Fortuño, Member of Congress for Puerto Rico.<sup>58</sup>

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<sup>44</sup> *Id.* at 6.

<sup>45</sup> *Id.* at 1, 4.

<sup>46</sup> LCPR Waiver Request at 4, 8-9; Reply Comments of Liberty Cablevision of Puerto Rico, Ltd. at 2 (“LCPR Reply”).

<sup>47</sup> LCPR Waiver Request at 4-6.

<sup>48</sup> *See id.*

<sup>49</sup> *Id.* at 7-8, citing 47 C.F.R. § 76.1204(a)(2).

<sup>50</sup> *Id.* at 9-10; LCPR Reply at 2.

<sup>51</sup> LCPR Waiver Request at 10.

<sup>52</sup> *Liberty Cablevision Files Request for Waiver of 47 C.F.R. § 76.1204(a)(1) with the Commission*, Public Notice DA 07-872 (rel. Feb. 27, 2007).

<sup>53</sup> ACA March 5 Comments at 3, 8.

<sup>54</sup> Motorola Comments, CSR-7124-Z, at 1-3.

<sup>55</sup> Telecommunications Regulatory Board of Puerto Rico Comments, CSR-7124-Z, at 2-4.

<sup>56</sup> CEA Comments, CSR-7124-Z, at 1-2. CEA also incorporates its earlier comments on BendBroadband’s request for a waiver. *Id.* at 1 n.1.

<sup>57</sup> LCPR Reply at 2-3.

<sup>58</sup> *Id.*, Exh. 1, Letter from the Honorable Luis G. Fortuño, Member of Congress for Puerto Rico to Kevin Martin, FCC Chairman (March 15, 2007).



### 3. The Iowa Network Services Providers

13. A subset of Petitioners (“INS Providers”) filed requests for waiver of the integration ban to allow them to use the conditional access technology that is or will be incorporated into their cable set-top boxes.<sup>59</sup> The INS Providers are a group of small MVPDs in Iowa who receive their programming through a central distribution network connected to a central headend operated by Iowa Network Services and offer (or intend to offer) video service over all-digital copper and fiber optic based systems. The INS Providers state that, as small rural providers, they “do not have the market power or resources to influence manufacturer timetables to develop conditional access solutions that comply with the FCC’s integration ban.”<sup>60</sup> They state that they have “diligently made inquiries with [their] middleware provider[s] to determine when an integration-ban compliant solution will be available,” but that the “providers have not committed to making compliant devices available before the effective date of the integration ban.”<sup>61</sup> The INS Providers argue that a waiver is justified “because a conditional access solution that provides for common reliance is not available.”<sup>62</sup> They state that, because they already operate all-digital systems, absent a waiver they will need to cease or will be unable to commence video programming until a compliant solution is found.

14. Motorola fully supports the waivers, while CEA opposes them, “unless found to be truly *de minimis*.”<sup>63</sup> Many of the INS Providers filed a joint reply to the Comments. Motorola states that special circumstances support grant of the waiver, including the fact the DSL-based video solution is a first-generation delivery system that represents only a small percentage of the MVPD marketplace, and because such “solutions were not designed to support third-party hardware configurations, nor are there any plans to build such capabilities into legacy equipment.”<sup>64</sup> CEA argues that the conditional access technology at issue does not comply with Commission rules, and that the INS Providers have provided no justification “that has ever been recognized by the Commission” for a permanent waiver on the requirement of common reliance.<sup>65</sup> CEA further states that the INS Providers do not assert that the navigation devices “presently support CableCARDS for competitive devices, or that they will or can do so in the future, based on their apparently exclusive reliance on a “middleware” system as described in their Petitions.”<sup>66</sup> CEA further contends that the INS Providers are apparently asking to be permanently excused from providing separate security modules according to a nationally [recognized] standard

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<sup>59</sup> These petitioners include: Winnebago Cooperative Telephone Association, Radcliffe Telephone Company, South Slope Cooperative Telephone Company, Farmers’ and Business Mens’ Telephone Company, Dumont Telephone Company, Heart of Iowa Communications Cooperative, Kalona Cooperative Telephone Co., West Liberty Telephone Company, Local Internet Service Company, Mahaska Communications Group, LLC, Bernard Telephone Company, Inc, and La Motte Telephone.

<sup>60</sup> See, e.g., Winnebago Cooperative Telephone Association Waiver Request at 3, Radcliffe Telephone Company Waiver Request at 3.

<sup>61</sup> *Id.* at 3.

<sup>62</sup> *Id.* at 4.

<sup>63</sup> CEA Comments, CSR-7177-Z, CSR-7143-Z, CSR-7142-Z, CSR-7146-Z, CSR-7148-Z, CSR-7140-Z, CSR-7149-Z, CSR-7182-Z, CSR-7147-Z, at 3 (“CEA INS Comments”); see also CEA Comments, CSR-7192-Z, at 4. CEA did not name Mahaska Communications Group, LLC, in its caption.

<sup>64</sup> Motorola Comments, CSR-7139-Z, CSR-7140-Z, CSR-7141-Z, CSR-7142-Z, CSR-7143-Z, CSR-7144-Z, CSR-7145-Z, CSR-7146-Z, CSR-7147-Z, CSR-7148-Z, CSR-7149-Z, CSR-7176-Z, CSR-7177-Z, CSR-7178-Z, CSR-7182-Z, CSR-7183-Z, CSR-7184-Z, CSR-7185-Z, at 9 (“Motorola May 3 Comments”).

<sup>65</sup> CEA INS Comments at 2; CEA Comments, CSR-7192-Z, at 4.

<sup>66</sup> *Id.*

security interface.”<sup>67</sup> CEA thus argues that grant of the waiver would “completely undermine the policy objective of Section 76.1204(a)(1), an objective declared by Congress.”<sup>68</sup> CEA maintains that, since the INS Providers already run all-digital systems, grant of the waiver is not necessary for the development or introduction of new services.<sup>69</sup> It states that the small size of the markets in question makes portability of navigation devices and common reliance more important to opening competition.

15. The INS Providers reply that they are not requesting a permanent waiver from compliance with the Commission’s rules, and that the Commission has “recognized that small rural video operators, by virtue of their unique circumstances, face special difficulties in complying with the July 1, 2007 deadline for separate security.”<sup>70</sup> The INS Providers maintain that, in contrast to CEA’s assertions, they are not required under Section 76.640 of the Commission’s rules “to provide and support the operation of CableCARDS since their systems rely on an all-digital video distribution network, and do not use QAM modulation for transporting programs and services from its headend to receiving devices.”<sup>71</sup> The INS Providers further state that “[t]he Commission has already recognized that video operators may comply with the integration ban by employing security solutions other than CableCARDS, such as downloadable access solutions.”<sup>72</sup> They reiterate that, in the absence of a waiver, they will be forced “to deny rural subscribers access to not only advanced all-digital video and related services, but to the basic features of its video system, thereby depriving customers from primary sources of news, entertainment, and advanced services that are readily available to their urban counterparts.”<sup>73</sup> They argue that the number of customers affected by grant of the waiver would be small, and that failure to grant the waiver “would in effect ‘punish’ the INS Providers for transitioning to an all-digital network.”<sup>74</sup>

#### 4. CTC Video Services, LLC

16. CTC Video Services, LLC (“CTC”) seeks temporary waiver of the integration ban to allow it to continue to place into service four integrated digital cable set-top boxes after July 1, 2007.<sup>75</sup> CTC argues that a waiver will ensure its “rapid and efficient introduction of competitive video programming and advanced broadband service.”<sup>76</sup> CTC also states that a waiver would serve the public interest by speeding the deployment of its competitive video services.<sup>77</sup> CTC argues that if it is denied a waiver, as a new entrant into the market it will have to endure significant start-up costs which would delay the introduction of its competitive video programming service.<sup>78</sup> According to CTC, this would leave the company with two options: providing services at lower levels than its customers demand or

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<sup>67</sup> *Id.* at 2-3.

<sup>68</sup> *Id.* at 3-4.

<sup>69</sup> *Id.* at 6.

<sup>70</sup> INS Provider Joint Reply Comments at 2.

<sup>71</sup> *Id.* at 3.

<sup>72</sup> *Id.* at 11.

<sup>73</sup> *Id.* at 5.

<sup>74</sup> *Id.* at 7, 9.

<sup>75</sup> CTC Waiver Request at 7. The devices for which CTC seeks waiver are the Scientific Atlanta models Explorer 1850, Explorer 3250 HD, Explorer 8300 SD DVR, and Explorer 8300 HD DVR.

<sup>76</sup> *Id.* at 1.

<sup>77</sup> *Id.* at 2.

<sup>78</sup> *Id.* at 1-2.



paying significantly higher consumer premises equipment costs than its competitor.<sup>79</sup>

17. Three parties filed comments in response to the Waiver Request. CTC also filed a reply to these comments. Motorola and the United States Telecom Association (“USTA”) strongly support grant of the waiver. Motorola emphasizes the higher costs associated with the CableCARD, and argues that these costs justify a waiver.<sup>80</sup> The USTA states that grant of the waiver request is warranted because CTC’s platform will bring advanced services to its market, resulting in the presence of the first terrestrial video MVPD competition within the vast majority of its territory.<sup>81</sup> The USTA also emphasizes the sharp cost increase, saying that even if compliant set-top boxes were available to CTC, the additional costs of deploying them would have a significant negative impact on CTC’s build out capabilities.<sup>82</sup>

18. CEA believes that a grant of the waiver is not warranted because CTC seeks the waiver for all classes of set-top boxes, not just the limited function boxes.<sup>83</sup> Further, CEA asserts that the Waiver Request is vague as to CTC’s intention after the proposed waiver period, specifically whether CTC would move to CableCARD-reliant products.<sup>84</sup>

19. In reply, CTC states that it “maintains an inventory and stands ready to deploy and bill for use of CableCARDS.”<sup>85</sup> Further, it affirms that if any of its customers purchase devices that rely on current or future CableCARD standards, then CTC will meet those customer needs.<sup>86</sup> Finally, CTC emphasizes that “the immediate deployment of compliant boxes using available technologies would place an unreasonable economic burden on a new market entrant, and lock CTC into a technology that may not be its best long-term solution.”<sup>87</sup>

## 5. CenturyTel, Inc.

20. CenturyTel, Inc. (“CenturyTel”) seeks waiver of the integration ban to allow it to continue to place into service low-cost, limited-function Motorola DSR 470 and refurbished DCT 2000 integrated set-top boxes (“Subject Boxes”) after July 1, 2007 and until February 17, 2009. CenturyTel argues that the public interest benefits associated with its commitment to transition to an all-digital network by February 17, 2009, are sufficient to justify a waiver, and argues that the Media Bureau made a similar finding in the *BendBroadband Order*.<sup>88</sup> CenturyTel maintains that a waiver of the integrated set-top box ban would free up the capital necessary to make the expenditures needed to transition to a digital network capable of supporting multi-channel video programming and other advanced services.<sup>89</sup> According to CenturyTel, “low-cost set-top boxes are essential to help transition cost-sensitive customers

<sup>79</sup> *Id.* at 6.

<sup>80</sup> Motorola May 3 Comments at 6, n.18.

<sup>81</sup> Letter from Glenn T. Reynolds, Vice President, Policy, United States Telecom Association, to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (May 14, 2007) (“USTA May 14 ex parte letter”).

<sup>82</sup> *Id.* at 2-3.

<sup>83</sup> CEA Comments, CSR-7176-Z, at 1.

<sup>84</sup> *Id.* at 2.

<sup>85</sup> CTC Reply at 5.

<sup>86</sup> *Id.* at 5-6.

<sup>87</sup> *Id.* at 4.

<sup>88</sup> CenturyTel Waiver Request at 7-10.

<sup>89</sup> *Id.* at 1.

to a digital platform, and particularly in rural areas, to persuade existing digital customers to obtain set-top boxes for all of their televisions.”<sup>90</sup>

21. CenturyTel asserts that the significant expenditures that would be required as a result of a denial of its waiver request would result in considerable cost increases for the consumer, which in turn would undermine CenturyTel’s ability to transition its customers to digital cable.<sup>91</sup> Further, CenturyTel states that its cable systems pertinent to this waiver request are small systems in rural communities which are exactly the types of systems the Commission has recognized would have difficulty in complying with the July 1, 2007 deadline.<sup>92</sup> In addition, CenturyTel contends that the Waiver Request is limited in scope and time in that it only covers two low-capability set-top box models for use in seven small, rural systems, and will only be needed until the company’s digital transition in February 2009.<sup>93</sup> CenturyTel requests that if the Waiver Request is not granted, the Bureau should defer enforcement of the integration ban until such time as CenturyTel is able to purchase CableCARD compliant set-top boxes or DCAS downloadable security is available, whichever is sooner.<sup>94</sup>

22. Three parties filed comments in response to the Waiver Request. CenturyTel also filed a reply to one of these comments. Motorola and USTA fully support grant of the waiver. USTA states that grant of the waiver request is warranted because CenturyTel is a “new entrant into the digital MVPD market providing cutting-edge digital services to consumers,” and has committed to completing the upgrade by the February 2009 deadline.<sup>95</sup> Motorola echoes CenturyTel’s assertion that denial of its waiver would have “real-world negative effects” on its digital transition plans.<sup>96</sup> Motorola asserts that failure to grant the Waiver Request would impose additional costs on consumers while at the same time derailing CenturyTel’s plan to transition to digital which, if the waiver is granted, would “facilitate the recapture of analog spectrum for more HD channels, faster Internet access, and other video and non-video services consumers want and value, and enable these cable operators to compete more effectively against DBS and other all-digital platforms.”<sup>97</sup>

23. CEA believes that grant of the Waiver Request would be rewarding CenturyTel’s “stockpiling of noncompliant devices” when it knew that the devices would soon be phased out.<sup>98</sup> CEA further asserts that because CenturyTel did not include the word “necessary” in its request, it is not following the guidelines laid out in Section 629(c) of the Telecommunications Act.<sup>99</sup> Additionally, CEA states that the devices for which CenturyTel seeks a waiver have advanced features which are excluded

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<sup>90</sup> *Id.* at 4.

<sup>91</sup> *Id.* at 5-6.

<sup>92</sup> *Id.* at 2.

<sup>93</sup> *Id.* at 8-9.

<sup>94</sup> *Id.* at 11.

<sup>95</sup> USTA May 14 ex parte letter at 3.

<sup>96</sup> Motorola May 3 Comments at 6.

<sup>97</sup> *Id.* at 5.

<sup>98</sup> CEA Comments, CSR-7178-Z, at 3-4.

<sup>99</sup> *Id.* at 4-5.

under the 2005 *Deferral Order*.<sup>100</sup> Finally, CEA claims that CenturyTel has “demonstrated no commitment to completing a digital transition in the near future.”<sup>101</sup>

24. In reply, CenturyTel states first that the CEA has simply adopted a blanket policy of opposing all requests for waivers of the integration ban, even when, as the instant case is, the request covers systems “of the kind for which waiver of the Integration Ban is most appropriate.”<sup>102</sup> CenturyTel further affirms that the CEA’s Comments regarding CenturyTel’s stockpiling of new, noncompliant devices are unfounded because neither of the Subject Boxes is currently manufactured and all of those devices that CenturyTel has in inventory are refurbished.<sup>103</sup> Also, CenturyTel declares that the CEA inaccurately described the functionality of the Subject Boxes as neither device is capable of supporting the advanced capabilities the CEA suggests they support.<sup>104</sup> Finally, CenturyTel states that contrary to what the CEA claimed, CenturyTel is in fact preparing its customers to transition to a digital platform by February 17, 2009.<sup>105</sup>

## 6. En-Touch Systems, Inc.

25. En-Touch Systems, Inc. (“En-Touch”), a cable overbuilder that directly competes with incumbent cable operators, seeks waiver of the integration ban for the Motorola DCT-700, relief that En-Touch claims is necessary to meet its goal of transitioning to an all-digital network by February 17, 2009.<sup>106</sup> En-Touch asserts that the cost increase associated with deploying CableCARD-equipped set-top boxes “would prevent En-Touch from being able to migrate to all digital prior to the 2009 DTV transition.”<sup>107</sup> Finally, En-Touch argues that the public interest benefits associated with its commitment to transition to an all-digital network by February 17, 2009 are sufficient to justify a waiver, and argues that the Media Bureau made a similar finding in the *BendBroadband Order*.<sup>108</sup>

26. Two parties filed comments in response to the Waiver Request. Motorola supports a waiver in this circumstance, while CEA opposes such a waiver. Motorola states that using the DCH-100, Motorola’s lowest-cost nonintegrated set-top box, will cost cable operators “substantially more than the DCT-700, even in higher volumes.”<sup>109</sup> According to Motorola, the additional cost will be borne by consumers, which threatens to reduce consumer adoption of digital service and thereby threaten En-Touch’s plan to transition to an all-digital network.<sup>110</sup> CEA argues that grant of the Waiver Request will

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<sup>100</sup> *Id.* at 5.

<sup>101</sup> *Id.*

<sup>102</sup> CenturyTel Reply at 2.

<sup>103</sup> *Id.* at 3.

<sup>104</sup> *Id.* at 5-6.

<sup>105</sup> *Id.* at 6-7.

<sup>106</sup> En-Touch Waiver Request at 2. En-Touch has provided a sworn declaration from its Chief Engineer attesting that it will transition to all-digital video service by February 17, 2009 and meet the other conditions placed upon BendBroadband in the *BendBroadband Order* if the Waiver Request is granted. *See* Waiver Request, *attaching* Sworn Declaration of Jason Bone, Chief Engineer, En-Touch Systems Inc. In addition, excepting local broadcast stations, En-Touch plans to transition its programming to all-digital on or before March 31, 2008. *Id.* .

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 3-4.

<sup>109</sup> Motorola May 3 Comments at 6.

<sup>110</sup> *Id.* at 5-7.

only serve to deny En-Touch subscribers the benefits of a competitive navigation device market.<sup>111</sup> CEA also asserts that “[f]urthering the digital transition does not require sacrificing competition in navigation devices.”<sup>112</sup> Finally, CEA encourages the Bureau to deny the Waiver Request as a means to ensure the commercial availability of navigation devices at retail.<sup>113</sup> In reply, En-Touch contends that CEA ignores En-Touch’s argument that it has “demonstrated its satisfaction of the requirements of the *BendBroadband Order*,”<sup>114</sup> and asserts that it will support the development of a commercial market for navigation devices by relying upon advanced capability, non integrated CableCARD devices to provide services to all subscriber that cannot be served utilizing the DCT-700.<sup>115</sup>

## 7. Qwest Communications International, Inc.

27. Qwest Communications International, Inc. (“Qwest”) seeks waiver of the integration ban to allow it to continue to place into service integrated set-top boxes with its current video delivery systems.<sup>116</sup> Qwest seeks waiver for the use of set-top boxes with both its very high-speed digital subscriber line (“VDSL”)-based delivery system and its fiber-to-the-home broadband passive optical network (“FTTH-BPON”).<sup>117</sup> Qwest argues that the Commission must grant the Waiver Request because of “special circumstances” involved with their set-top boxes as well as the public interest.<sup>118</sup>

28. Specifically, Qwest states that the VDSL-based delivery system is a breakthrough, first-generation delivery system that is very different from that used by traditional wire-based cable companies.<sup>119</sup> And as such, it is now being surpassed by movement in the industry to digital subscriber line (“DSL”)-based delivery architectures.<sup>120</sup> As a result, neither Qwest’s current set-top box vendor nor any other set-top box manufacturer currently makes or has plans to develop alternate set-top boxes for this system.<sup>121</sup> As for the FTTH-BPON boxes, although there is an alternative set-top box currently available, Qwest argues that forcing it to provide such an alternative would create costs that would not only hinder the development and implementation of the next generation FTTH architecture, but also provide no benefit to the small number of customers currently using this architecture.<sup>122</sup> Qwest further points out that it is planning on migrating away from the use of both of these types of boxes in the next few years.<sup>123</sup>

29. In addition, Qwest states that waiver is warranted because it will serve the public interest through the “uninterrupted continued growth of wire-based competition in video services delivery, and

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<sup>111</sup> CEA Comments, CSR-7183-Z, at 2-3.

<sup>112</sup> *Id.* at 3.

<sup>113</sup> *Id.*

<sup>114</sup> En-Touch Reply at 2.

<sup>115</sup> *Id.* at 3.

<sup>116</sup> Qwest Waiver Request at 1.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 1-2.

<sup>119</sup> *Id.* at 2, 7, 10.

<sup>120</sup> *Id.* at 2, 10.

<sup>121</sup> *Id.* at 8-11.

<sup>122</sup> *Id.* at 6, 11-12.

<sup>123</sup> *Id.* at 6.

the unhindered development and deployment of an improved video delivery platform.”<sup>124</sup> Finally, Qwest posits that granting waiver will further the Act’s competitive goals and the public interest because Qwest offers a competitive wire-based alternative to incumbent cable operators.<sup>125</sup>

30. Two parties filed comments in response to the Waiver Request; Qwest also filed a reply to these comments. Motorola fully supports Qwest’s waiver request, echoing and confirming Qwest’s assertion that the VDSL-based delivery system was “not designed to support third-party hardware configurations, nor are there any current plans to build such capabilities into legacy equipment.”<sup>126</sup> Motorola also agrees with Qwest on the issue of public interest, stating that a denial would limit Qwest’s ability to expand their services to new customers and would “force the diversion of resources towards solutions for product lines that are being retired, rather than toward the development and deployment of next-generation solutions for these platforms.”<sup>127</sup>

31. On the other hand, CEA states that waivers are not necessary and would be inappropriate for various reasons. First, CEA claims that although Qwest has asserted that it will be moving within the next few years to a next-generation architecture, it has not said for sure whether the technology to which it intends to migrate will itself be non-integrated.<sup>128</sup> Further, CEA points out that the only “special circumstance” surrounding the FTTH-BPON is that it would rather not incur the expense of compliance with the rule and that “[r]equesting a waiver solely to avoid the cost of compliance is tantamount to challenging the common reliance rule in its entirety.”<sup>129</sup> Finally, CEA maintains that the public interest actually favors denying the waivers as any benefit from Qwest’s continued ability to deploy new security-integrated set-top boxes is outweighed by harm to the public interest in a robust, competitive market for navigation devices at retail.”<sup>130</sup>

32. In reply, Qwest argues that in accomplishing its migration to new delivery systems, it “fully intends to use set-top boxes with those new delivery systems that are compliant with the letter and the spirit of the integration ban if such boxes exist and enable a smart solution.”<sup>131</sup> And that the only reason Qwest has not definitively made this assertion is because the industry has only recently switched its efforts from developing set-top boxes that are designed for use with a quadrature amplitude modulation (“QAM”) to developing standards enabling the interoperability of CE devices with Internet protocol television (“IPTV”) networks that include DSL-based delivery structure.<sup>132</sup> Further, Qwest states that more than one special circumstance surrounding these set-top boxes exists.<sup>133</sup> Finally, Qwest also reemphasizes the fact that the public interest would be better served by granting these waivers

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<sup>124</sup> *Id.* at 12.

<sup>125</sup> *Id.*

<sup>126</sup> Motorola May 3 Comments at 9.

<sup>127</sup> *Id.* at 9-10.

<sup>128</sup> CEA Comments, CSR-7182, at 2-3.

<sup>129</sup> *Id.* at 3.

<sup>130</sup> *Id.*

<sup>131</sup> Qwest Reply at 3.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 2-4; Qwest Waiver Request at 7-12.

because of the increased competition resulting in lower prices, improved customer service, and consumer choices.<sup>134</sup>

## 8. Verizon

33. Verizon seeks waiver based on its commitment to transition to an all-digital network by February 17, 2009 if it is granted waiver of the integration ban.<sup>135</sup> Verizon contends that this transition “will provide strong, additional incentives for consumers to make the switch to digital equipment.”<sup>136</sup> Verizon also asserts that this transition will “free up bandwidth that can be used for additional digital programming, and in particular to increase Verizon’s HD offering.”<sup>137</sup> In its Waiver Request, Verizon also argues that the Commission must grant the Waiver Request because Verizon’s new FiOS TV video services are exactly the sort of competitive and innovative technology that Congress contemplated when it adopted the waiver provision in Section 629(c).<sup>138</sup> Further, Verizon contends that denying the Waiver Request would hamper Verizon’s deployment of the FiOS network, which, unlike existing cable systems, brings fiber-optic cable directly to customer premises and uses a Quadrature Amplitude Modulation/Internet Protocol (“QAM/IP”) network to allow interactivity.<sup>139</sup> Verizon claims that it is a new competitive entrant with a small market share that is developing a new technology and service, much like DBS when the Commission granted it a waiver of the separability requirements in 1998.<sup>140</sup> Verizon also seeks implementation of a “truly interoperable downloadable conditional access system.”<sup>141</sup>

34. Motorola supports Verizon’s waiver request, stating that Verizon is providing a new and innovative MVPD service, as contemplated in Section 629(c).<sup>142</sup> Other parties disagree, arguing that Verizon is not providing a new and innovative service, and stating that FiOS is simply a substitute for a traditional cable service and should be afforded the same treatment as its competitors.<sup>143</sup> Verizon, CEA claims, is purposely vague about the service and doesn’t explain how the service differs from current cable service, since Verizon’s IP-services are similar to cable’s two-way services.<sup>144</sup> As such, CEA claims Verizon has no different problems from any other operator, and argues that Verizon has not provided evidence of a single technical problem with CableCARD.<sup>145</sup> NCTA claims that Verizon’s limited use of IP technology is not an appropriate basis for a waiver, and that the Commission must treat all technologies equally, in order to avoid market-skewing results.<sup>146</sup>

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<sup>134</sup> Qwest Reply at 4.

<sup>135</sup> Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (June 29, 2007).

<sup>136</sup> *Id.* (citing BendBroadband Order, 22 FCC Rcd at 217, ¶ 24).

<sup>137</sup> *Id.* at 3.

<sup>138</sup> Verizon Waiver Request at 5.

<sup>139</sup> *Id.* at 8.

<sup>140</sup> *Id.* at 9-11, 23-24 (citing *First Report and Order* at 14800-01).

<sup>141</sup> Verizon Waiver Request at 26.

<sup>142</sup> Motorola Comments, CSR-7042-Z, at 2-3.

<sup>143</sup> CEA Comments, CSR-7042-Z, at 4; Sony Comments, CSR-7042-Z, at 3-4.

<sup>144</sup> CEA Comments, CSR-7042-Z, at 4.

<sup>145</sup> CEA Comments, CSR-7042-Z, at 9.

<sup>146</sup> NCTA Comments, CSR-7042-Z, at 14.



35. Verizon responds that its QAM/IP network utilizes the best of traditional cable technology and the innovation of IP technology, providing services that cable cannot, including interactive applications like FiOS widgets, which allows users to see real-time traffic and weather through their set-top box.<sup>147</sup> Further, Verizon's fiber-to-the-premises ("FTTP") network and QAM/IP system present unique technological problems not applicable to incumbent cable operators.<sup>148</sup> Motorola agrees, stating that applying existing CableCARD standards to Verizon's innovative QAM/IP network will deny consumers the full benefits of FiOS TV,<sup>149</sup> and that it would be difficult, if not impossible, to create a unique integration ban solution for FiOS TV, as there are substantial additional costs, complexities and time exigencies because QAM/IP architecture is used.<sup>150</sup> Motorola doubts that any manufacturer would elect to make the investment in a box that would only work for the limited number of FiOS subscribers.<sup>151</sup>

36. NCTA suggests Verizon is not a new entrant due to its market capitalization and build-out plans.<sup>152</sup> TiVo argues that Verizon will be able to enter the market regardless of whether the Commission grants the waiver request,<sup>153</sup> and that a grant will not further Section 629's goals of commercial availability and increased competition in the navigation device market. TiVo argues that Verizon should not be rewarded for its conscious decision to ignore the integration ban,<sup>154</sup> and that Verizon's claims that requiring compliance prior to a DCAS solution would lead to wasteful costs are unpersuasive, as such costs are simply what it necessary to comply with Commission rules.<sup>155</sup> TiVo argues that because CableCARD-reliant devices must deal with those costs, Verizon should have to as well.<sup>156</sup>

37. Verizon counters that the issue of whether it is a new entrant is separate from the issues of whether it is a large company and whether it is likely to succeed.<sup>157</sup> Verizon claims the more important concern is whether Verizon is introducing competition into a marketplace that sorely needs it.<sup>158</sup> Verizon asserts that its entry into video services is exactly the pro-competitive result Congress desired in creating the waiver provision in Section 629(c). Further, it argues that imposing a CableCARD requirement would deny consumers the full benefits of FiOS, as discussed above.

38. CEA claims Verizon incorrectly points to the FCC's forbearance for DBS as precedent for a waiver.<sup>159</sup> CEA asserts that rather than creating a precedent, the Commission decided that, with

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<sup>147</sup> Verizon Reply at 4-5.

<sup>148</sup> *Id.* at 8.

<sup>149</sup> Motorola Comments, CSR-7042-Z, at 3.

<sup>150</sup> *Id.* at 5.

<sup>151</sup> *Id.* at 4.-5.

<sup>152</sup> NCTA Comments, CSR-7042-Z, at 9. NCTA claims that a company with Verizon's technical and financial resources (revenue of \$75 billion, more than all the cable service companies combined) has resources a true new entrant does not.

<sup>153</sup> *Id.* at 5.

<sup>154</sup> *Id.* at 4.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 5-6.

<sup>157</sup> Verizon Reply at 3.

<sup>158</sup> *Id.*

<sup>159</sup> CEA Comments, CSR-7042-Z, at 10.

respect to DBS, any rules that impose technical obligations on MVPD systems do not apply.<sup>160</sup> TiVo argues that the Commission accepted the DBS providers as new entrants only after noting the market for DBS equipment was competitive and far different from the market for equipment for other MVPD services.<sup>161</sup>

39. Verizon responds that Section 629 and the Commission's rules indicate any waiver will apply to service providers within a category, and Verizon cites the DBS waiver as an example.<sup>162</sup> Verizon asserts the DBS providers were granted a waiver because they were new entrants, and that FiOS is analogous to the circumstances that led to the DBS waiver because: (1) FiOS will offer benefits of competition, similar to the DBS carriers; (2) the regulations harm Verizon as a new entrant and may force them to change their business model; and (3) Verizon just entered the video market and needs the waiver to continue to develop its video service while it has such a small market share.<sup>163</sup>

40. NCTA argues that if waiver is granted, it should be granted to all providers, not simply Verizon.<sup>164</sup> According to NCTA, if the Commission grants Verizon's Waiver Request, that waiver must apply to all cable operators, as Section 629(c) states that all waivers adopted are effective for all service providers.<sup>165</sup>

41. Verizon and TiVo disagree with NCTA, and maintain the Commission should limit the applicability of any waiver it grants to those providers who use a QAM/IP system over FTTP architecture.<sup>166</sup> While TiVo opposes the Waiver Request, it does agree that the Commission can logically limit any waiver to categories of providers.<sup>167</sup> If the Commission grants Verizon's request, TiVo urges the Commission to clarify that the waiver applies to Verizon in its capacity as a new entrant and does not extend to all MSOs.<sup>168</sup> Verizon further argues that its unique technological platform is a category, and that NCTA's proposed reading of "category" in Section 629(c) would lead to an absurd result, is untenable when considered in context, and contradicts NCTA's past interpretations of the statute.<sup>169</sup>

42. Many commenters contend that Verizon's Open DCAS proposal has merit but needs to be further developed.<sup>170</sup> CEA and TiVo assert that since DCAS is not ready to be deployed widely or made available to competitive devices, Verizon's request is for an open-ended exemption rather than for a limited time.<sup>171</sup> TiVo asserts the Commission cannot grant a waiver for an indiscriminate amount of time.<sup>172</sup> Instead, argues TiVo, the Commission should end the delays and require that all MVPDs adhere

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<sup>160</sup> *Id.*

<sup>161</sup> TiVo Comments, CSR-7042-Z, at 6.

<sup>162</sup> Verizon Reply at 12.

<sup>163</sup> *Id.* at 12-13.

<sup>164</sup> NCTA Comments, CSR-7042-Z, at 8.

<sup>165</sup> *Id.* at 7-8 (citing 47 U.S.C. § 549(c)).

<sup>166</sup> Verizon Reply at 12, TiVo Comments, CSR-7042-Z, at 8.

<sup>167</sup> TiVo Comments, CSR-7042-Z, at 8-9.

<sup>168</sup> *Id.*

<sup>169</sup> Verizon Reply at 14-15.

<sup>170</sup> See TiVo Comments, CSR-7042-Z, at 7; IT Comments, CSR-7042-Z, at 5.

<sup>171</sup> CEA Comments, CSR-7042-Z, at 6; TiVo Comments, CSR-7042-Z, at 7.

<sup>172</sup> TiVo Comments, CSR-7042-Z, at 7.

to the July 1, 2007 integration ban date.<sup>173</sup>

43. Verizon counters that its request is properly limited to the time that it takes to harmonize the adoption of an appropriate DCAS system with the Commission's integration ban, but states that if the Commission believes a certain time period should be imposed, three years is a reasonable period of time.<sup>174</sup>

#### **9. Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable TV**

44. Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable TV ("Choice") seeks waiver of the integration ban that would allow Choice to continue to place into service all integrated set-top boxes after July 1, 2007. In the alternative, and at the very least, Choice seeks waiver for the DCT-700.<sup>175</sup> Choice gives several reasons for the waiver it requests. First, building on the rationale for the waivers we granted to BendBroadband, Millennium, and GCI, Choice states that it has already completed the migration to an all-digital network.<sup>176</sup> It has, in other words, achieved the goal towards which BendBroadband, Millennium, and GCI are still working. In order to complete its migration to an all-digital network, Choice deployed Motorola DCT-700 boxes to its subscribers. Choice wishes to continue to do so after July 1, 2007, when the ban on the further distribution of integrated boxes takes effect. Potential subscribers to Choice's service who have analog receivers will need a set-top box to convert Choice's digital content into signals that can be displayed on their analog screens.<sup>177</sup> Choice claims that the primary two boxes that it will be able to use are Motorola's integrated DCT-700 and its non-integrated DCH-100. The DCT-700 costs \$79. The DCH-100 will cost nearly three times more.<sup>178</sup> Choice states that without a waiver, it will not be able to offer high definition and personal video recording services to its customers.<sup>179</sup> Choice reasons that if the Commission grants waivers to encourage BendBroadband, Millennium, and GCI to complete their transitions to all-digital networks, it should grant Choice a waiver for having already completed its own transition, and to support and sustain it in surpassing that goal.<sup>180</sup>

45. Choice also argues for its waiver on the grounds that its service areas – small and rural communities in Puerto Rico – have weak economic conditions and low subscription to cable service.<sup>181</sup> These factors, Choice claims, make impractical the use of boxes three times more costly than the DCT-700 because the costs will not be accepted by its existing and potential subscribers.<sup>182</sup> Choice also claims that the Commission, when it adopted Section 76.1204(a)(1), did not consider conditions in Puerto Rico,<sup>183</sup> and that CableCARD-based devices are not generally available in retail and other outlets in

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<sup>173</sup> *Id.* at 7-8.

<sup>174</sup> Verizon Reply at 12.

<sup>175</sup> See Choice Waiver Request, CSR-7042-Z, at 2-6.

<sup>176</sup> *Id.* at 1, 2.

<sup>177</sup> *Id.* at 2.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 8-10.

<sup>180</sup> *Id.* at 4-5.

<sup>181</sup> *Id.* at 2-3.

<sup>182</sup> *Id.* at 3.

<sup>183</sup> *Id.* at 5-6 n.8 (citing 47 C.F.R. § 76.1204(a)(2)).

Puerto Rico.<sup>184</sup>

46. Two parties submitted comments on Choice's Waiver Request, one in support and one in opposition. Motorola strongly supports Choice's request and echoes Choice's argument that continued deployment of the low-cost DCT-700 is necessary for Choice "to continue to attract new customers to its service and to serve existing customers who need additional or replacement set-top boxes."<sup>185</sup> The effect is especially strong, Motorola asserts, in the poor, rural areas of Puerto Rico served by Choice.<sup>186</sup>

47. In opposing grant of the waiver request, the CEA posits that Congress' purpose for the integration ban will not be forwarded by further delays of the ban's implementation.<sup>187</sup> The CEA asserts that Choice has stated no grounds for waiver under Section 629(c).<sup>188</sup> The CEA argues that grant of a waiver under Sections 1.3 and 76.7 of the Commission's rules "would serve to ratify the nullification of FCC regulations by larger MSOs and their vendors,"<sup>189</sup> but if waiver is granted, it should be done with "forward-looking obligations to assure compliance and the achievement of a national competitive market in '2-way' navigation devices rather than perpetual future renewal."<sup>190</sup>

#### 10. Guinness Communications Inc. d/b/a Delta Cable Vision

48. Guinness Communications Inc. d/b/a Delta ("Delta")<sup>191</sup> seeks waiver of the integration ban to allow it to continue to place into service new Motorola DCT-700 integrated digital cable set-top boxes after July 1, 2007.<sup>192</sup> Delta argues that it should be afforded the same conditional relief that the Commission granted to BendBroadband in January 2007.<sup>193</sup> Delta states that Motorola's least expensive CableCARD equipped device costs approximately three times as much as the integrated DCT-700<sup>194</sup> and that "because a transition to all-digital requires a significant number of new set-top boxes, this enormous cost increase would prevent Delta Cable from being able to migrate to all digital prior to the 2009 DTV transition."<sup>195</sup>

49. If its Waiver Request is granted, however, Delta states that "it will convert to an all-digital network prior to February 17, 2009" and "would reclaim the spectrum now used for analog channels to offer increased HD and VOD programming, higher Internet access speeds, competitive telephone services, and other advanced telecommunications capabilities."<sup>196</sup>

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<sup>184</sup> *Id.* at 7-8.

<sup>185</sup> Motorola Comments, CSR-7201-Z, CSR-7202-Z, at 2 ("Motorola June 7 Comments").

<sup>186</sup> *Id.* at 4.

<sup>187</sup> CEA Comments, CSR-7193-Z, CSR-7202-Z, CSR-7201-Z, at 1-2 ("CEA Non-Contiguous U.S. Comments").

<sup>188</sup> *Id.* at 2.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> Although Delta is a Canadian cable operator, it provides service to approximately 750 U.S. consumers who live in Point Roberts, Washington. Waiver Request at 1.

<sup>192</sup> *Id.*

<sup>193</sup> *See BendBroadband Order*, 22 FCC Rcd at 209.

<sup>194</sup> Delta Waiver Request at 3 & n.5.

<sup>195</sup> *Id.* at 4.

<sup>196</sup> *Id.* at 3.

50. Two parties filed comments in response to the Waiver Request. Delta also filed a reply to these comments. Motorola strongly supports grant of the waiver. Motorola emphasizes the higher costs associated with the CableCARD and new set-top boxes, and argues that these costs justify a waiver because without one, Delta will not be able to complete its transition to an all-digital network by February 17, 2009.<sup>197</sup> CEA believes that a grant of the waiver would not give Delta any additional influence over “monopoly vendors” and asks the Commission to “bear in mind that too many or too liberal exceptions would serve to ratify the nullification of FCC regulations by larger MSOs and their vendors.”<sup>198</sup> In reply, Delta states that the CEA’s concern is unfounded because Delta serves only 750 customers in the United States and grant of this Waiver Request “would not create any new precedent, but instead would be a ratification of the Commission’s existing precedent . . . .”<sup>199</sup>

#### 11. Volcano Vision, Inc.

51. Volcano Vision, Inc. (“Volcano Vision”) seeks waiver of the integration ban to allow it to continue to place into service integrated digital cable set-top boxes after July 1, 2007.<sup>200</sup> Volcano Vision asserts that grant of this request will allow it to convert to an all-digital network by early 2008.<sup>201</sup> The company states that it already has enough set-top boxes in inventory to ensure that each of its customers will be able to view digital cable programming on analog television sets following its migration to an all-digital network.<sup>202</sup> Further, Volcano Vision has already provided notification to all of its analog customers of its plans to go all-digital.<sup>203</sup> Accordingly, Volcano Vision states that it has met all of the conditions set forth in the BendBroadband Order.<sup>204</sup> Finally, Volcano Vision argues that grant of its Waiver Request is in the public interest because the company’s migration to an all-digital network “will allow it to reclaim a considerable amount of spectrum within a defined timeframe, enabling it to provide consumers with advanced telecommunication capabilities.”<sup>205</sup>

52. Two parties filed comments in response to Volcano Vision’s Waiver Request. Motorola fully supports grant of the waiver, arguing that it is justified not only because of the detriment of the added costs that a denial would impose on a small cable operator like Volcano Vision,<sup>206</sup> but also based on Bureau precedent in the *GCI Order* and the *Millennium Order*.<sup>207</sup> CEA believes that a grant of the waiver is not justified because it doesn’t believe that Volcano Vision makes sufficient mention of CableCARDs or a commitment to comply with “other Commission regulations that require the provision of CableCARDs and the support on the network of CableCARD-reliant navigation devices.”<sup>208</sup> In reply,

<sup>197</sup> Motorola June 7 Comments at 1-3.

<sup>198</sup> CEA Non-Contiguous U.S. Comments at 2.

<sup>199</sup> Delta Reply at 1-2.

<sup>200</sup> Waiver Request at 1.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* at 3.

<sup>203</sup> *Id.* at 4.

<sup>204</sup> *Id.* at 5; see *BendBroadband Order*, 22 FCC Rcd at 215, ¶ 20.

<sup>205</sup> Volcano Vision Waiver Request at 6.

<sup>206</sup> Motorola Comments, CSR-7212-Z, CSR-7214-Z, CSR-7216, at 5.

<sup>207</sup> *Id.* at 4; see *GCI Order* (granting GCI’s request conditioned on GCI going all-digital by February 17, 2009); *Millennium Order* (granting Millennium’s request conditioned on Millennium going all-digital by December 31, 2007).

<sup>208</sup> CEA Comments, CSR-7214-Z, at 2.

Volcano Vision maintains that the set-top boxes for which it seeks a waiver are integral to its commitment to migrate to an all-digital network by early 2008.<sup>209</sup> Also, Volcano Vision claims that without a waiver it would have to strand approximately \$500,000 worth of set-top boxes which would create a financial hardship for a company of its size.<sup>210</sup>

## 12. The Rural ATM Digital Providers Group and the IPTV Operators Group

53. Pursuant to Sections 629(a) and 629(c) of the Communications Act of 1934, as amended<sup>211</sup> and sections 1.3, 76.7 and 76.1207 of the Commission's rules,<sup>212</sup> the members of the Rural ATM Digital Video Providers Group and the IPTV Operators Group ("ATM and IPTV Providers Group")<sup>213</sup> seek permanent waiver of the Commission's open interface rule (*i.e.*, these providers seek waiver so that they may offer a separated security function that does not use a commonly used interface,

<sup>209</sup> Volcano Vision Reply at 2.

<sup>210</sup> *Id.* at 3.

<sup>211</sup> 47 U.S.C. § 549(a), (c).

<sup>212</sup> 47 C.F.R. §§ 1.3, 76.7, 76.1207.

<sup>213</sup> The members of the ATM and IPTV Providers Group are: Ace Telephone Association, All West Communications, Alliance Communications, Alliance Telecommunications Corporation, Ballard Rural Telephone Cooperative Corporation, Inc., BEVCOMM, Inc., Brandenburg Telecom, LLC, Cameron Communications LLC, Cheqtel Communications Company, Chibardun Telephone Cooperative, Inc., Crystal Communications Inc. dba HickoryTech, D&E Communications, Eckles Telephone Company, EN-TEL Communications, LLC, Farmers Cooperative Telephone Company, Halstad Telephone Company, Hanson Communications, Inc., Hector Communications Corporation, Home Telephone Company of South Carolina, Hometown Online, Inc, Horizon Telecom, HTC Services Inc., Hutchinson Telecommunications Inc, Hutchinson Telephone Company, Interstate Telecommunications Cooperative, Inc., James Valley Cooperative Telephone Company, Kaplan Telephone Company, Inc., Kasson & Mantorville Telephone Co., Lakedale Communications, LLC, Manti Tele Communications Company, MH Telecom LLC, NEP Datavision, Inc., New Ulm Telecom, Inc., Northern Valley Communications, North Central Communications, Inc., Northland Communications, Inc., Northstar Access LLC, Paul Bunyan Rural Telephone Cooperative, PBT Cable Services, Inc., Peoples Telephone Company, Piedmont Rural Telephone Cooperative, Inc., Pine Island Telephone Company, PRTCommunications, LLC, Santel Communications Cooperative, Sherburne Cable-Com, Inc., Sleepy Eye Telephone Company, South Central Rural Telephone Cooperative Inc., South Central Telcom LLC, Split Rock Properties, Inc., Venture Vision, Volunteer Wireless Inc., Wabash Independent Networks, Inc, West Carolina Communications, Western Telephone Company, Wood County Telephone dba Solarus, XIT Telecommunication & Technology LTD dba XIT Communications, Yadkin Valley Telecom, Inc., Ace Telephone Association dba Ace Communications Group, Ace Telephone Company of Michigan dba Ace Communications Group, Albany Mutual Telephone, All West/Utah, Inc., Alliance Communications, BEK Communications Coop, Branch Cable, Inc., Cameron Communications, LLC, Chibardun Cable TV, Inc., Coleman County Telecommunications dba Coleman County Broadcasting, Consolidated Cable Vision, Inc., Consolidated Telephone Company, Coon Valley Telecommunications, Daktel Communications, LLC, D&E Systems, Inc., Delta Telephone, Inc., DTC Cable, Inc., Etex Communications, LP, Franklin Telephone, Inc., Hargray CATV Company, Inc., Hometown Online, Inc., Indiana Fones, Inc., Interstate Telephone Company, James Valley Cooperative Telephone Company, LaValle Long Distance, LBH, LLC, Marquette Adams Communications, LLC, North Dakota Telephone Company, Northern Valley Communications, LLC, NTELOS Media Inc., Perry-Spencer Communications, Inc. dba PSC, Pineland Telephone Cooperative, Inc., Price County Telephone Co., Richland Grant Long Distance, Ringgold Telephone Company, Sancom, Inc., StarVision, Inc., Stockholm Strandburg Telephone Company, Tech Com, Inc., Telepak Networks, Inc., Tomorrow Valley Cable Television, Inc., Union Information Systems, LLC, United Telephone Mutual Aid Corp., Valley Communications, Inc., Venture Vision, Verneau Networks, Inc., Vernon Communications, LLC, Viking Electronics dba Polar Cablevision, Volunteer Wireless, Inc.



and does not conform to technical standards promulgated by a national standards organization).<sup>214</sup> Certain ATM and IPTV Providers Group's members utilize the Motorola Next Level video platform, while others use Internet Protocol Television, to provide video services to their subscribers in small and rural markets.<sup>215</sup> Using these technologies, telephone companies were able to enter the video market by allowing them "to take advantage of existing telecommunications infrastructure, including the core fiber optic network and twisted copper pairs to subscriber premises, to deliver broadband services like video and high-speed internet."<sup>216</sup> Although the ATM and IPTV Providers Group claims that their systems contain non-integrated conditional access functions, they also claim that their systems utilize proprietary network interfaces that do not – and will not be able to – comply with Section 76.1204(b) by the July 1 deadline.<sup>217</sup> The ATM and IPTV Providers Group asserts that without waiver, its customers would be prohibited from adding or changing any service that would require a new set-top box.<sup>218</sup> In addition, compliance with the rule would mean abandonment of the ATM and IPTV systems at a cost so great it "could force [The ATM and IPTV Providers Group's members] to abandon the video market."<sup>219</sup> The ATM and IPTV Providers Group claims that waiver will not undermine the policy objectives of the open interface requirement and indeed, denying their waiver requests would undermine "the Act's overall objective of deploying advanced telecommunications and information technologies and services to all Americans" by denying Rural ATM's customers of competitive cable or even cable service altogether.<sup>220</sup> The ATM and IPTV Providers Group emphasizes that their members' networks are already all-digital and therefore should receive a waiver consistent with the *Cablevision Order* and the *BendBroadband Order*.<sup>221</sup> The ATM and IPTV Providers Group also emphasizes that its members serve a very small percentage of the nation's cable subscribers, and grant of their Waiver Requests would have a negligible effect on the nationwide market for navigation devices.<sup>222</sup>

### 13. Cablevision of Marion County

54. Cablevision of Marion County, LLC ("CMC") seeks waiver of the integration ban for four Motorola set-top boxes,<sup>223</sup> relief that CMC claims is necessary to meet its goal of transitioning to an all-digital network by February 17, 2009.<sup>224</sup> CMC claims that grant of its waiver request will allow it to "increase its HD and VOD capacity, and to develop new and improved and other digital services."<sup>225</sup>

<sup>214</sup> See 46 C.F.R. § 76.1204(b) ("Conditional access function equipment made available pursuant to paragraph (a)(1) of this section shall be designed to connect to and function with other navigation devices available through the use of a commonly used interface or an interface that conforms to appropriate technical standards promulgated by a national standards organization.").

<sup>215</sup> Rural ATM Waiver Request at 6; IPTV Operators Waiver Request at 4-5.

<sup>216</sup> Rural ATM Waiver Request at 6-7; IPTV Operators Waiver Request at 4-5.

<sup>217</sup> Rural ATM Waiver Request at 6; IPTV Operators Waiver Request at 9-10.

<sup>218</sup> Rural ATM Waiver Request at 9.

<sup>219</sup> *Id.* at 9-10. See also IPTV Operators Waiver Request at 12.

<sup>220</sup> Rural ATM Waiver Request at 11-12; IPTV Operators Waiver Request at 14.

<sup>221</sup> See Rural ATM Waiver Request at 15-16; IPTV Operators Waiver Request at 16-17.

<sup>222</sup> See Rural ATM Waiver Request at 12-13, 17; IPTV Operators Waiver Request at 15.

<sup>223</sup> Those devices are the DCT-700, the DCT-2500, the DSR-410, and the DSR-470. CMC Waiver Request at 2.

<sup>224</sup> See *id.* at 1-2.

<sup>225</sup> *Id.* at 1.

CMC claims that this relief would be consistent with the relief afforded BendBroadband, GCI, and Millennium.<sup>226</sup>

### III. DISCUSSION

55. The Petitioners submitted their Waiver Requests variously under Section 629(c) of the Act,<sup>227</sup> Section 706 of the Telecommunications Act of 1996,<sup>228</sup> and the general waiver provisions found in Sections 1.3<sup>229</sup> and 76.7<sup>230</sup> of the Commission's rules. Accordingly, we analyze the Waiver Requests pursuant to the waiver standards set forth in Section 629(c)<sup>231</sup> as well as under the general waiver provisions found in Sections 1.3 and 76.7 of the Commission's rules. As discussed below, we find that we cannot grant any of the Waiver Requests under Section 629(c). At the same time, given each Petitioner's demonstration that it has already made such a transition, or stated commitment to move to an all-digital network by February 17, 2009 if it is able to continue to deploy certain low-end integrated set-top boxes after July 1, 2007, we conclude that limited grants of the Waiver Requests under Sections 1.3 and 76.7 of the Commission's rules is justified in order to enable the Petitioners to continue to provide all-digital services to their subscribers, or to complete their migrations to all-digital networks by February 17, 2009. We therefore conditionally grant the Waiver Requests. The details of that conditional grant are set forth below.

#### A. Section 629(c) of the Act

56. Section 629(c) states in relevant part that:

[t]he Commission shall waive a regulation adopted under subsection (a) of this section for a limited time upon an appropriate showing . . . that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products.<sup>232</sup>

As mentioned above, the principal goal of Section 629 of the Act is to foster competition and consumer choice in the market for navigation devices. Section 629(a) thus charges the Commission with adopting regulations that further that goal. At the same time, however, Congress intended "that the Commission avoid actions which could have the effect of freezing or chilling the development of new technologies and services."<sup>233</sup> Accordingly, waivers of those regulations are granted when doing so "is necessary to assist

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<sup>226</sup> *Id.* at 3.

<sup>227</sup> 47 U.S.C. § 549(c).

<sup>228</sup> Section 706 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (1996 Act), reproduced in the notes under 47 U.S.C. § 157.

<sup>229</sup> 47 C.F.R. § 1.3.

<sup>230</sup> 47 C.F.R. § 76.7.

<sup>231</sup> Section 76.1207 of the Commission's rules, 47 C.F.R. § 76.1207, implements Section 629(c) of the Act and tracks the language of that statutory provision almost verbatim.

<sup>232</sup> 47 U.S.C. § 549(c).

<sup>233</sup> S. REP. 104-230, at 181 (1996) (Conf. Rep.).

the development or introduction of a new or improved” service, such as, for example, a nascent MVPD offering from a new competitor.<sup>234</sup>

57. Certain Petitioners argue that Waiver Request grants are necessary to assist in the development of new and improved digital cable services, such as increased HD and VOD programming, increased broadband speed and capacity, and other digital services, as well as to ease reduce the burdens of the over-the-air transition to all-digital broadcasting.<sup>235</sup> As we stated in the *January 10 Orders*, we do not find that such arguments generally justify a waiver under Section 629(c) of the Act.<sup>236</sup> While it could be argued that a waiver under Section 629(c) would assist the development or introduction of virtually any service offered by an MVPD, we do not believe that Congress intended for us to interpret this narrowly tailored exception in such a lenient manner. Indeed, as we stated in the *BendBroadband Order*, such an interpretation would effectively negate any rules adopted pursuant to Section 629(a).<sup>237</sup>

## B. Sections 1.3 and 76.7 of the Commission’s Rules

58. In the *BendBroadband Order*, the Bureau “recognize[d] that the ability to rapidly migrate to an all-digital network would produce clear, non-speculative public benefits,” particularly when considered in the context of the Commission’s goal of promoting the broadcast television digital transition.<sup>238</sup> The Bureau conditionally granted BendBroadband’s waiver request pursuant to Sections 1.3 and 76.7 of the Commission’s rules,<sup>239</sup> subject to BendBroadband’s submission of a sworn declaration stating that it would take specific steps, as outlined in the *BendBroadband Order*, to demonstrate its commitment to an all-digital network within its stated timeframe. More recently, the Bureau conditionally granted similar waivers to GCI and Millennium.<sup>240</sup>

59. We find that, as limited below, the Waiver Requests now before us likewise present non-speculative public interest benefits that justify grant.<sup>241</sup> The Petitioners currently operate, or will operate

<sup>234</sup> See *First Report and Order*, 13 FCC Rcd at 14801, ¶ 65 (declining to apply the integration ban to DBS providers and noting that “in many instances, the Commission refrains from imposing regulations on new entrants”) (citation omitted).

<sup>235</sup> See, e.g., En-Touch Waiver Request at 2.

<sup>236</sup> See *BendBroadband Order*, 22 FCC Rcd at 213-214, ¶¶ 13-14 (denying BendBroadband’s argument that waiver was necessary to assist the development or introduction of HD and VOD, wireless, business services, and more robust broadband, and citing Congressional intent for a narrow reading of the waiver provisions of Section 629(c)); *Comcast Order*, 22 FCC Rcd at 235-237, ¶¶ 16-19.

<sup>237</sup> *Id.* at 214, ¶ 14.

<sup>238</sup> See, e.g., *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, FCC 07-69, ¶¶ 9-14 (rel. May 3, 2007) (adopting a labeling requirement for analog-only television receivers while noting that “[t]he government has a strong interest in ensuring a timely conclusion of the digital transition”); *Requirements for Digital Television Receiving Capability*, 21 FCC Rcd. 9478, 9480, ¶ 7 (2006) (stating that “consumers must be able to receive digital TV signals for the DTV transition to move forward to a successful completion”); *Requirements for Digital Television Receiving Capability*, 20 FCC Rcd 18607, 18609, ¶ 6 (2005) (stating that consumers’ ability to receive digital TV signals is essential to a successful completion of the DTV transition). See also *BendBroadband Order*, 20 FCC Rcd at 217, ¶ 24.

<sup>239</sup> *BendBroadband Order*, 20 FCC Rcd at 218, ¶ 27.

<sup>240</sup> See *supra* n.21-24 and accompanying text.

<sup>241</sup> While we do not decide in this order whether the ATM and IPTV Providers Group members are in compliance with Section 76.1204(a)(1) as they claim, we nevertheless grant them waiver of that provision, which will afford them relief similar to what they seek.

before February 17, 2009, all-digital video distribution networks comparable to the all-digital networks to which BendBroadband, GCI, and Millennium have committed to migrate. As many of the Petitioners argue, “[s]trict enforcement of the rule, moreover, would in effect ‘punish’ [the Petitioners] for transitioning to an all-digital network”<sup>242</sup> and would prohibit Petitioners from “offer[ing] their subscribers the use of set-top boxes necessary to access even the basic features of the video system due to its all-digital transmissions.”<sup>243</sup> In addition, we note that many of the Petitioners are providing, or will provide, all-digital service to rural customer bases.<sup>244</sup> Moreover, we disagree with CEA’s assertions that the Waiver Requests should be denied because of their potential impact upon competition in cable navigation devices and the common reliance rule.<sup>245</sup> As discussed above and in the *BendBroadband Order*, we believe that all-digital networks produce clear, non-speculative public interest benefits that, on balance, warrant a limited grant of the Waiver Requests. Therefore, the captioned Petitioners may deploy set-top boxes with integrated security after July 1, 2007.

60. On the other hand, we find that a waiver for certain high-end devices for traditional cable operators would be inconsistent with the narrowly defined goal of the conditional waiver granted to BendBroadband.<sup>246</sup> The purpose of the conditional waiver granted in the *BendBroadband Order* under Sections 1.3 and 76.7 of the Commission’s rules was not meant to provide BendBroadband with a means to avoid the potentially higher short-term costs associated with deployment of non-integrated boxes to be used for other, high-end functions like digital video recorder (“DVR”) and HD capabilities;<sup>247</sup> rather, it was to permit BendBroadband to transition to an all-digital system. While the DCT-700 and Scientific Atlanta Explorer 1850 offer two-way functionality, we noted in the *Comcast Order* that, due to a lack of interest from cable operators, a low-cost device whose functionality is limited solely to making digital

<sup>242</sup> See, e.g., INS Provider Joint Reply Comments at 9; LCPR Waiver Request at 1-2; CTC Waiver Request at 1-2.

<sup>243</sup> INS Provider Joint Reply Comments at 9. See also INS Provider Joint Reply Comments at 9. (arguing that, absent a waiver, “[s]ubscribers would ... [be] deprived from a primary source of news, entertainment, and advanced services that are readily available to their urban counterparts, a result that would be plainly inequitable and, in these cases, unnecessary”); INS Provider Joint Reply Comments at 10 (stating that “[a] waiver therefore is necessary to permit subscribers to continue to enjoy the benefits that [Petitioners’] advanced all-digital video service offers, and to allow Petitioner[s] to continue to expand [their] service to subscribers that would not otherwise have access to high-quality video programming and services in rural areas”).

<sup>244</sup> See, e.g., INS Provider Joint Reply Comments at 10 (stating that the Petitioners “have not merely committed to, but have delivered, an all-digital network to serve their rural customer bases”); Volcano Vision Waiver Request at 1 (stating that waiver “will permit Volcano Vision to execute its plan to convert its small, rural cable television to an all-digital network by early 2008, thereby providing its customers with expanded, high quality programming services and broadband internet access.”).

<sup>245</sup> CEA INS Comments at 5 (arguing that granting the Waiver Requests “would appear to eviscerate competitive availability as well as common reliance”).

<sup>246</sup> See *Millennium Order* at ¶ 17.

<sup>247</sup> See generally *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Second Report and Order, 20 FCC Rcd 7924, ¶ 29 (2005) (“We do not take lightly the imposition of additional costs on consumers, particularly in our efforts to implement a consumer-friendly statutory directive to increase competition. However, we are inclined to agree with the CE parties that the cost of the POD and POD-host interface combination likely will decrease over time as volume increases. In addition, the costs that this requirement will impose should be counterbalanced to a significant extent by the benefits likely to flow from a more competitive and open supply market. In particular, it seems likely that the potential savings to consumers from greater choice among navigation devices will offset some of the costs from separating the security and non-security functions of either MVPD-supplied devices or those that might be otherwise be made available through retail outlets.”).

signals available on analog sets (*i.e.*, a truly “limited-capability” device) has never been mass produced.<sup>248</sup> Accordingly, it is our understanding that the DCT-700 and the Scientific Atlanta Explorer 1850 are two of the most basic set-top boxes available to traditional cable operators being mass-produced at this time. By contrast, it appears that certain devices for which Petitioners seek waiver are the highest-end boxes on the market today. We are unconvinced that waiver for devices such as the Scientific Atlanta Explorer 3250 HD, Explorer 8300 SD DVR, and Explorer 8300 HD DVR is necessary to further Petitioners’ migrations to all-digital systems. For the reasons discussed, we limit the relief granted to traditional cable operators in this order to devices that do not have HD or DVR capabilities.

61. It is our understanding that set-top box manufacturers have not developed any non-integrated HD or DVR devices for use with Internet Protocol (“IP”), Asynchronous Transfer Mode (“ATM”) or hybrid QAM/IP systems.<sup>249</sup> To the extent that this understanding is correct, we will allow operators to deploy HD and DVR devices with integrated security elements for use on such systems until July 1, 2008. Over the next year, those operators should work to develop and deploy a separable security solution that will allow for interoperability between their systems and consumer electronics equipment, preferably a downloadable solution based on open standards.<sup>250</sup>

62. To the extent that the Petitioners have not yet transitioned to all-digital networks, this relief is conditional. As a condition of waiver, any Petitioner who has not yet completed its transition to an all-digital network must: (1) file with the Media Bureau a sworn declaration within 10 days of the release of this order in which it commits to move to an all-digital network on or before February 17, 2009;<sup>251</sup> (2) notifies all of its analog customers of its plans to go all digital at least one year in advance of that event and again six months in advance of that event,<sup>252</sup> and submits a sworn declaration to the Commission confirming that such notice has been provided; (3) ensures that, at least one year prior to its migration to all digital, it has in its inventory or has placed orders for enough set-top boxes to ensure that each of its customers can continue to view its video programming on their television sets and submits a sworn declaration to the Commission confirming that this is the case, and (4) publicly commits to this plan by sworn declaration. As we explained in the *BendBroadband Order*, such a declaration will “demonstrate [a] commitment to move to an all-digital network.”<sup>253</sup>

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<sup>248</sup> *Comcast Order*, 22 FCC Rcd at 239, ¶ 26 n.97.

<sup>249</sup> See, e.g., INS Provider Joint Reply Comments at 5.

<sup>250</sup> We also encourage these operators to take an active role in the Commission’s efforts to develop a solution for bidirectional compatibility between consumer electronics devices and multichannel video programming systems. See *Implementation of Section 304 of the Telecommunications Act of 1996*, Third Further Notice of Proposed Rulemaking, FCC 07-120 (rel. June 29, 2007).

<sup>251</sup> Although certain Petitioner’s target dates for transitioning to all-digital cable systems are slightly longer than that permitted in the *BendBroadband Order*, we believe the additional periods requested to transition to all-digital systems are of a reasonably short duration such that they are generally consistent with the deadline imposed upon BendBroadband. The key to the public interest analysis is that these transitions will be complete by the February 17, 2009 deadline for the DTV transition. See *GCI Order* at n.54,

<sup>252</sup> Cablevision of Marion County seeks to transition certain systems in early 2008, would prefer not to wait an entire year before transitioning those systems, and therefore proposes a six-month notification period. See CMC Waiver Request at 4. Given CMC’s ambitious transition plan, that request is granted for any system that CMC plans to transition to all-digital before July 1, 2008.

<sup>253</sup> See *BendBroadband Order*, 22 FCC Rcd at 216, ¶ 21. It is important that these operators notify their analog customers about the impending transitions to an all-digital networks to ensure that the subscribers understand that devices that are not equipped with CableCARDS will not receive cable service without a set-top box, and to provide those subscribers with ample time to order CableCARDS or request set-top boxes from their providers.

**IV. ORDERING CLAUSES**

63. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1.3 and 76.7 of the Commission's rules, 47 C.F.R. §§ 1.3, 76.7, a waiver of Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1), **IS GRANTED** to the petitioners listed in the Appendix as set forth in this Order.

64. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai  
Chief, Media Bureau



## APPENDIX

Ace Telephone Association	CSR-7237-Z
Ace Telephone Association dba Ace Communications Group	CSR-7298-Z
Ace Telephone Company of Michigan dba Ace Communications Group	CSR-7299-Z
Albany Mutual Telephone	CSR-7300-Z
All West Communications	CSR-7238-Z
All West/Utah, Inc.	CSR-7301-Z
Alliance Communications	CSR-7239-Z, CSR-7302-Z
Alliance Telecommunications Corporation	CSR-7240-Z
Ballard Rural Telephone Cooperative Corporation, Inc.	CSR-7241-Z
BEK Communications Coop	CSR-7303-Z
Bernard Telephone Company Inc.	CSR-7192-Z
BEVCOMM, Inc.	CSR-7242-Z
Branch Cable, Inc.	CSR-7304-Z
Brandenburg Telecom, LLC	CSR-7243-Z
Cablevision of Marion County, LLC	CSR-7347-Z
Cameron Communications LLC	CSR-7244-Z, CSR-7305-Z
CenturyTel, Inc.	CSR-7178-Z
Cheqtel Communications Company	CSR-7245-Z
Chibardun Cable TV, Inc.	CSR-7306-Z
Chibardun Telephone Cooperative, Inc.	CSR-7246-Z
City of San Bruno d/b/a San Bruno Municipal Cable TV	CSR-7116-Z
Coleman County Telecommunications dba Coleman County Broadcasting	CSR-7307-Z
Consolidated Cable Vision, Inc.	CSR-7308-Z
Consolidated Telephone Company	CSR-7309-Z
Coon Valley Telecommunications	CSR-7310-Z

Crystal Communications Inc. dba HickoryTech	CSR-7247-Z
CTC Video Services, LLC	CSR-7176-Z
D&E Communications	CSR-7248-Z
D&E Systems, Inc.	CSR-7312-Z
Daktel Communications, LLC	CSR-7311-Z
Delta Telephone, Inc.	CSR-7313-Z
DTC Cable, Inc.	CSR-7314-Z
Dumont Telephone Company	CSR-7147-Z
Eckles Telephone Company	CSR-7249-Z
EN-TEL Communications, LLC	CSR-7250-Z
En-Touch Systems, Inc	CSR-7183-Z
Etex Communications, LP	CSR-7315-Z
Farmers Cooperative Telephone Company	CSR-7251-Z
Farmers' and Business Mens' Telephone Company	CSR-7146-Z
Franklin Telephone, Inc.	CSR-7316-Z
Guinness Communications Inc. d/b/a Delta Cable Vision	CSR-7202-Z
Halstad Telephone Company	CSR-7252-Z
Hanson Communications, Inc.	CSR-7253-Z
Hargray CATV Company, Inc.	CSR-7317-Z
Heart of Iowa Communications Cooperative	CSR-7148-Z
Hector Communications Corporation	CSR-7254-Z
Home Telephone Company of South Carolina	CSR-7255-Z
Hometown Online, Inc	CSR-7256-Z, CSR-7318-Z
Horizon Telcom	CSR-7257-Z
HTC Services Inc.	CSR-7258-Z
Hutchinson Telecommunications Inc	CSR-7259-Z
Hutchinson Telephone Company	CSR-7260-Z
Indiana Fones, Inc.	CSR-7319-Z
Interstate Telecommunications Cooperative, Inc.	CSR-7261-Z
Interstate Telephone Company	CSR-7320-Z
James Valley Cooperative Telephone Company	CSR-7262-Z, CSR-7321-Z

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Kalona Cooperative Telephone Co.	CSR-7149-Z
Kaplan Telephone Company, Inc.	CSR-7263-Z
Kasson & Mantorville Telephone Co.	CSR-7264-Z
La Motte Telephone Company	CSR-7215-Z
Lakedale Communications, LLC	CSR-7265-Z
LaValle Long Distance	CSR-7322-Z
LBH, LLC	CSR-7323-Z
Liberty Cablevision of Puerto Rico, Ltd.	CSR-7124-Z
Local Internet Service Company	CSR-7182-Z
Mahaska Communications Group, LLC	CSR-7184-Z
Manti Tele Communications Company	CSR-7266-Z
Marquette Adams Communications, LLC	CSR-7324-Z
MH Telecom LLC	CSR-7267-Z
NEP Datavision, Inc.	CSR-7268-Z
New Ulm Telecom, Inc.	CSR-7269-Z
North Central Communications, Inc.	CSR-7271-Z
North Dakota Telephone Company	CSR-7325-Z
Northern Valley Communications	CSR-7270-Z, CSR-7326-Z
Northland Communications, Inc.	CSR-7272-Z
Northstar Access LLC	CSR-7273-Z
NTELOS Media Inc.	CSR-7327-Z
Paul Bunyan Rural Telephone Cooperative	CSR-7274-Z
PBT Cable Services, Inc.	CSR-7275-Z
Peoples Telephone Company	CSR-7276-Z
Perry-Spencer Communications, Inc. dba PSC	CSR-7328-Z
Piedmont Rural Telephone Cooperative, Inc.	CSR-7277-Z

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Pine Island Telephone Company	CSR-7278-Z
Pineland Telephone Cooperative, Inc.	CSR-7329-Z
Price County Telephone Co.	CSR-7330-Z
PRTCommunications, LLC	CSR-7279-Z
Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable TV	CSR-7201-Z
Qwest Communications International, Inc.	CSR-7185-Z
Radcliffe Telephone Company	CSR-7142-Z
Richland Grant Long Distance	CSR-7331-Z
Ringgold Telephone Company	CSR-7332-Z
Sancom, Inc.	CSR-7333-Z
Santel Communications Cooperative	CSR-7280-Z
Sherburne Cable-Com, Inc.	CSR-7281-Z
Sleepy Eye Telephone Company	CSR-7282-Z
South Central Rural Telephone Cooperative Inc.	CSR-7283-Z
South Central Telcom LLC	CSR-7284-Z
South Slope Cooperative Telephone Company	CSR-7143-Z
Split Rock Properties, Inc.	CSR-7285-Z
StarVision, Inc.	CSR-7334-Z
Stockholm Strandburg Telephone Company	CSR-7335-Z
Tech Com, Inc.	CSR-7336-Z
Telepak Networks, Inc.	CSR-7337-Z
Tomorrow Valley Cable Television, Inc.	CSR-7338-Z
Union Information Systems, LLC	CSR-7339-Z
United Telephone Mutual Aid Corp.	CSR-7340-Z
Valley Communications, Inc.	CSR-7341-Z
Venture Vision	CSR-7286-Z, CSR-7342-Z
Verizon	CSR-7042-Z
Verneau Networks, Inc.	CSR-7343-Z
Vernon Communications, LLC	CSR-7344-Z
Viking Electronics dba Polar Cablevision	CSR-7345-Z

Volcano Vision, Inc.	CSR-7214-Z
Volunteer Wireless Inc.	CSR-7287-Z, CSR-7346-Z
Wabash Independent Networks, Inc	CSR-7288-Z
West Carolina Communications	CSR-7289-Z
West Liberty Telephone Company	CSR-7177-Z
Western Telephone Company	CSR-7290-Z
Winnebago Cooperative Telephone Association	CSR-7140-Z
Wood County Telephone dba Solarus	CSR-7291-Z
XIT Telecommunication & Technology LTD dba XIT Communications	CSR-7292-Z
Yadkin Valley Telecom, Inc.	CSR-7293-Z